

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 22

March 5, 1996, 2:21 p.m.  
Page S-1511 Temp. Record

## CUBAN LIBERTY ACT CONFERENCE/Passage

**SUBJECT:** Conference report to accompany the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 . . . H.R. 927. Agreeing to the conference report.

### ACTION: CONFERENCE REPORT AGREED TO, 74-22

**SYNOPSIS:** The conference report to accompany H.R. 927, the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, will strengthen sanctions against the communist Cuban government and will prepare for a transition government leading to a democratically elected government in Cuba. Existing sanctions that have been imposed by Executive order will be codified. A new private right of action in Federal court will be created to pursue claims against individuals and entities that traffic in property expropriated by Cuba. Individuals who traffic in such property will be denied visas to enter the United States. Details are provided below.

#### Title I, Sanctions Against the Current Cuban Government

- civil penalties of up to \$50,000 will be imposed for trading with Cuba, and any property involved in such trading, at the direction of the Secretary of the Treasury, will be forfeited to the United States;
- the President will be urged to encourage foreign countries to restrict trade with, and credit to, Cuba, and will be urged to apply sanctions immediately (in accordance with the Cuban Democracy Act of 1992) against countries assisting Cuba;
- it will be illegal for a United States citizen or resident alien to provide indirect financing for a transaction involving property stolen by the Cuban government from a citizen of, or legal entity in, the United States as of the date of enactment of this Act;
- the United States will continue to oppose Cuban membership in international financial institutions, and will reduce its support for any such institution that provides aid to Cuba by an amount equal to the amount of aid given;
- the United States should continue to oppose Cuban membership in the Organization of American States;
- aid to former Soviet states will be conditioned on their conducting their economic relations with Cuba on market terms;
- any former Soviet state that gives assistance to Cuba in return for using intelligence facilities in Cuba will have its United States aid reduced by the amount of aid given by it to Cuba; the President will be able to waive this requirement if he certifies that giving

(See other side)

YEAS (74)			NAYS (22)		NOT VOTING (4)	
Republicans (47 or 92%)	Democrats (27 or 60%)		Republicans (4 or 8%)	Democrats (18 or 40%)	Republicans (2)	Democrats (2)
Abraham	Helms	Baucus	Bond	Akaka	Lugar- <sup>2</sup>	Inouye- <sup>2</sup>
Ashcroft	Hutchison	Biden	Chafee	Bingaman	Roth- <sup>2</sup>	Nunn- <sup>2</sup>
Bennett	Inhofe	Bradley	Hatfield	Boxer		
Brown	Kassebaum	Breaux	Jeffords	Bumpers		
Burns	Kempthorne	Bryan		Dodd		
Campbell	Kyl	Byrd		Feingold		
Coats	Lott	Conrad		Harkin		
Cochran	Mack	Daschle		Kennedy		
Cohen	McCain	Dorgan		Kerrey		
Coverdell	McConnell	Exon		Kerry		
Craig	Murkowski	Feinstein		Leahy		
D'Amato	Nickles	Ford		Levin		
DeWine	Pressler	Glenn		Moseley-Braun		
Dole	Santorum	Graham		Moynihan		
Domenici	Shelby	Heflin		Murray		
Faircloth	Simpson	Hollings		Pell		
Frist	Smith	Johnston		Simon		
Gorton	Snowe	Kohl		Wellstone		
Gramm	Specter	Lautenberg				
Grams	Stevens	Lieberman				
Grassley	Thomas	Mikulski				
Gregg	Thompson	Pryor				
Hatch	Thurmond	Reid				
	Warner	Robb				
		Rockefeller				
		Sarbanes				
		Wyden				

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

aid is in the national security interests of the United States; humanitarian, nuclear disarmament, and other specified types of United States aid will not be reduced under this section;

- Television Marti's broadcast signal will be converted to an Ultra-High Frequency signal;
- enforcement of existing prohibitions on the importation of Cuban sugars and other products from Cuba will be tightened;
- the President may aid individuals and nongovernmental organizations to support democracy-building efforts in Cuba;
- any country or any entity within a country that provides assistance to Cuba for the completion of the Juragua nuclear plant will have aid withheld by an amount equal to that assistance;
- it is the sense of Congress that the President should not allow United States citizens to send money to family members in Cuba unless the Cuban government allows the unfettered operation of small businesses, and that if that condition is met, the President should require a special license to send more than \$500;
- it is the sense of Congress that the President should not allow travel to Cuba by United States residents unless the Cuban government first ends the sanction for trying to leave Cuba, releases political prisoners, recognizes the right of association, and recognizes other fundamental freedoms (see 104th Congress, 1st session, vote No. 492 for related debate);
- the President will be authorized to establish and implement an exchange of news bureaus with Cuba if the exchange is fully reciprocal and if other conditions are met;
- Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996 (four Americans who were flying unarmed small aircraft on a humanitarian mission in international airspace were killed in that attack), extends its condolences to the families of the victims of the attack, and urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

#### Title II, Post-Castro Transition to Democracy

- the President will develop a plan for providing support to the Cuban people during a transition to a democratically elected government and for providing support to them once they have such a government;
- food, medicine, and other basic humanitarian assistance will be authorized for a transitional government;
- the President may provide economic assistance and military adjustment assistance to a democratically elected government;
- the President will be authorized to suspend the economic embargo if a transitional government is in power in Cuba;
- the President will terminate the economic embargo when a democratically elected government is in power;
- the President will not determine that a transitional government is in power in Cuba unless the government in power: has legalized all political activities; has released all political prisoners and made its prisons open for investigation by human rights groups; has dissolved its secret police forces; has committed to organizing free and fair elections within 18 months, with multiple political parties, equal access to the media, and international observers; has made progress in establishing an independent judiciary, respecting basic human rights and freedoms, and allowing the establishment of unions and other organizations (for related debate, see 104th Congress, 1st session, vote No. 493); has given assurances it will allow the distribution of aid to the Cuban people; and does not include Fidel or Raul Castro; and
- the President will not determine that a democratically elected government is in power in Cuba unless the following additional conditions have been met: that government took power through free and fair elections; it respects basic civil liberties and human rights; it is substantially moving toward a market economy; it is committed to making constitutional changes to ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba; it has made demonstrable progress in establishing an independent judiciary; and it has made demonstrable progress in returning, or making restitution for, property expropriated from United States citizens.

#### Title III, Protection of Property Rights of United States Nationals

- beginning 3 months after the date of enactment, any person or entity who traffics in property owned by a United States "national" (a citizen of or legal entity within the United States) that was expropriated by Cuba after January 1, 1959, may be sued in Federal court and assessed damages equal to 3 times the value of that property and accumulated interest, plus attorney fees and court costs; for claims that have not been certified, at least 30 days notice will have to be given of the intention to file suit;
- this right of action will only apply to cases in which the confiscated property is worth more than \$50,000;
- actions brought against the Castro Government will not apply to a transitional or democratic Cuban government;
- this right of action may be suspended when there is a transitional government in Cuba and will be terminated when there is a democratically elected government in Cuba; and
- the President will be able to suspend this right of action for 6 months, and for successive 6-month periods, if he notifies Congress that such suspension is in the national interests of the United States and will expedite a transition to democracy in Cuba.

#### Title IV: Exclusion of Certain Aliens

- visas and entry into the United States will be denied for any alien: who is responsible for the confiscation of property in Cuba owned by a U.S. national; who has converted such property to personal use; who trafficks in such property; or who is a corporate officer, principal, or controlling interest shareholder in an entity that has confiscated or trafficks in such property; the spouses and dependents of such aliens will also be denied visas and entry into the United States.

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**Those favoring passage contended:**

When Castro comes to the United States and is feted by graying liberals who bask in his 1960s radical chic cachet, it is not considered polite to bring up his support of terrorism, his suppression of all basic human rights, his denial of all political rights, his involvement in drug trafficking, or his murder of civilians who are caught attempting to flee from his evil regime. Such little matters are not mentioned by liberals as they revel in Castro's denunciations of the United States. Most Americans, of course, understand that Castro is a brutal communist dictator with no respect for human life, human freedoms, or any opinions other than his own, and they are not at all impressed by his comments on their free country. Most Americans, across the political spectrum, strongly support the United States' policy that has existed for more than 35 years of imposing sanctions and seeking the ouster of Castro.

That policy is being slowly abandoned by President Clinton. Over the past 3 years President Clinton has eased many of the long-standing restrictions on Cuba. Castro, the world community, and many Members of Congress view the President's actions as the first steps in the normalization of relations. Also, President Clinton has reversed a 37-year policy of accepting into the United States all Cubans who manage to escape the Castro dictatorship. Horrifically, he has gone so far as to make the United States an accomplice in Castro's brutal repression by ordering U.S. vessels to intercept at sea fleeing Cubans and to hand them over to the Castro regime. One of the major reasons H.R. 927 is necessary is to stop President Clinton from further destroying the United States' policy on Cuba. The sanctions and restrictions that exist have been imposed by Executive order. Without this bill, President Clinton will have unilateral authority to abandon the policy entirely. H.R. 927 will bind President Clinton by codifying all current sanctions and restrictions. If he wants to help Castro in the future, he will have to get his proposal through Congress first.

The other major reason the bill is necessary is to stop Castro from using the new means he has found to get the money he needs to stay in power--that means is the sale of property that has been stolen from United States citizens. For the three decades before the collapse of the Soviet Union the United States' policy put great pressure on the Castro regime. The only reason the regime was able to survive was that the Soviet Union propped it up with annual subsidies of \$5 billion to \$6 billion. In the past few years, without Soviet aid, the policy has had much greater effect. The Cuban economy is in a shambles. Castro has been barely clinging to power. His main source of hard currency has been coming from the sale of expropriated businesses. Those businesses, most of which were stolen from United States citizens, are being sold to be operated as joint ventures. Foreigners who invest in these properties get part of the profits, and the Castro government gets the rest. In Cuba, foreign investors do not deal with the Cuban people--they deal with the Cuban Government. The Cuban Government decides who will work, how much they will be paid, the conditions under which they will work, and all other related matters. In Cuba, there is no right to disagree. Foreigners who invest in joint ventures in Cuba are complicit in the enslavement of the Cuban people for the support of the Castro dictatorship. This support is very critical for the survival of the Castro government; its only other growing source for hard currency is the tourism industry that it is building, which is largely based on prostitution.

In 1981, when the Soviet Union still existed, there was only one joint venture in Cuba. In 1990, as the Soviet Union began crumbling, two more started. The numbers began growing exponentially upon the collapse of the Soviet Union, reaching 74 new joint ventures in 1994. In an effort to stop this illegitimate use of United States citizens' property, this bill proposes a new cause of action in Federal court for property worth more than \$50,000. Further, anyone who traffics in this property will be denied entry into the United States. We are confident this effort will work. The introduction of this bill in 1995 immediately reduced the number of new joint ventures by more than 50 percent, despite the aggressive advertising of sales by the Castro regime. The threat of retaliation, even when passage of the bill was considered unlikely, was enough to stop most trafficking in this stolen property. Passage of this bill should bring new ventures to a halt, and should end many existing ones. President Clinton will be able to waive the right to sue for 6-month periods, but the possibility that he may not will be enough to stop further investments (waiver authority was included because President Clinton said he would not sign the bill without such authority).

Passage of H.R. 927 is now assured. For a time there were rumblings of a veto, but those threats have disappeared due to the recent brutal, surprise attack by Cuban Mig fighters on two unarmed passenger aircraft that were on a humanitarian mission. Four Americans were murdered in that attack. The planes were operated by Brothers to the Rescue, a group that searches the waters between Cuba and the United States for refugees from Cuba who are in need of assistance. The murder by Cuba of four Americans in an election year made it possible to win the President's support for this bill. Other recent outrages have occurred, such as the Cuban government's sinking of a tugboat in 1994 that was filled with freedom-seeking Cubans (approximately 40 Cubans, including many young children, were drowned) and its much more recent imprisonment of more than 100 Cubans who asked permission to hold a political meeting, but this attack against American citizens demands a response from the United States.

Some Members still oppose passage of H.R. 927. They have raised numerous objections to the sections on expropriated property. We believe those objections are unwarranted. For instance, the claim that the United States cannot bring charges for actions that occur outside of its territory is false--under international law, if a nation or its citizens are harmed by actions in other countries then actions can be brought domestically. Generally, to be effective, the party sued needs to have a presence in the country where the suit is filed. In the case of Cuba, most of the foreign companies entering into joint ventures are multinational corporations with branches in the United States. Another false claim raised by our colleagues is that the new cause of action that this bill will create will clog our courts with new litigation. The truth is that few suits will be brought, because only illegal trafficking in properties worth more than \$50,000

will be actionable. Cubans with smaller claims will still be able to pursue them with the Foreign Claims Settlement Commission. One objection of our colleagues that we find especially hard to swallow is that it will violate NAFTA to create this new cause of action. Even the Clinton Administration agrees that nothing in NAFTA says that the United States cannot let its citizens sue foreigners who traffic in their stolen property.

Some Senators are convinced that the United States policy of sanctions has been a mistake. They oppose this bill because they want to see a gradual normalization of relations, believing that better relations will lead to democracy in Cuba. We disagree. We think relations should only improve as conditions in Cuba improve. That approach is followed by this bill. This bill will codify that once Castro is gone, the United States will help in efforts to bring democracy to Cuba. H.R. 927 will hasten Castro's departure by continuing economic pressure and by stopping him from perpetuating his rule by profiting from property stolen from United States citizens. We urge our colleagues to vote in favor of passage.

**Those opposing passage contended:**

We support the goals of this legislation. We too would like to see Cuba become a democratic nation. Also, we concur that Cuba's recent shooting down of two unarmed civilian airplanes flown by United States citizens was a despicable act. However, this bill will help the Castro government in Cuba, not hurt it. Tightening sanctions will make Castro a martyr in the eyes of Cubans and in the eyes of most of the world. At the same time as Castro is helped, the Cuban people will suffer from increased economic isolation, and the United States will suffer in its international trade relations with the rest of the world. Passing this bill will play right into Castro's hands--he ordered the shooting down of those two planes to provoke precisely this type of response from the United States.

For 35 years the policy of isolating Cuba has failed. Castro has so far outlasted 8 American Presidents who have attempted to oust him through economic pressure and isolation. That policy may have made the average Cuban poorer, but it has done nothing to stop Castro: from supporting terrorists; from sending troops around the world to fight for other communist dictators; from engaging in drug trafficking; from suppressing all individual freedoms; from imprisoning, torturing, and murdering opponents of his regime; or from murdering Cuban civilians who are caught attempting to escape to the United States. Castro has enslaved the Cuban people--he does not care if the United States follows a policy that makes his slaves a little poorer.

In fact, Castro approves of that policy because it strengthens his grip on power. The rest of the world has refused to follow the United States' lead in opposing Castro. When the United Nations holds votes on imposing embargoes on Cuba, typically the only country that will join the United States in favor of them is Israel. Further, Israel only votes with the United States to show its support; it has trade relations with Cuba. The only country in the world that has an embargo on Cuba is the United States. The United States looks like a bully, and Castro looks heroic for standing up to it. He can use American policy as an excuse for everything from poor economic conditions to the need to crack down on dissent, and the Cuban people accept the excuse. Castro also benefits from the United States' policy of isolation because it keeps the wealth and freedom of the United States hidden from the view of the Cuban people. If they fully understood the benefits of democracy and capitalism they would demand the same in Cuba. By keeping Cubans in ignorance, Castro is able to keep them subdued.

The most damaging aspect of this bill, though, is that it will violate international law by allowing United States citizens to sue citizens of other countries for actions they take outside of the United States with property expropriated by Cuba. Even worse, it will allow them to sue for actions taken with property that was taken from them before they were U.S. citizens. This right to sue is unique and unprecedented. Historically, the United States has "espoused" (taken diplomatic steps on behalf of) the claims of U.S. citizens when other countries have taken their property. It has specifically refused to espouse the claims of immigrants who lost property before they were citizens of this country, however, and it has never tried to hold responsible any private entity that gains an interest in property that has been expropriated. The general rule followed by the United States, and by all other countries under international law, is that a country may seek redress on behalf of a citizen who has had his property expropriated. No country, though, attempts to hold responsible any entity that subsequently has use of expropriated property. If any recovery is made, it should be from the country that has taken the property. Further, no country tries to recover damages for immigrants who had property taken while they were still citizens of other countries. When a country takes property from its own citizens it is not an international incident, nor does it become one later if that citizen emigrates.

Passing this section on expropriated property, and applying it only to Cuba, will damage the United States' trade relations with most of the world. It will violate NAFTA, clog the Federal courts, and will again make the United States look like a bully. Other countries have expropriated property of U.S. citizens, but this right to sue will only be for property expropriated by Cuba. Admittedly, the United States has reached similar settlements with other countries that have taken property and Castro has steadfastly refused to make any accommodations, but that fact does not justify this departure from established international law.

The knee-jerk, visceral reaction to Castro's shooting down of 2 American planes is to respond with sanctions that are supposedly punishing. However, sanctions help Castro--the best punishment we could pass would be to improve relations with Cuba. We should do everything possible to expand trade and other contacts with this country. The more we can get Cuba to open up, the more quickly Castro will fall. The policy pursued by this bill, though popular, is fundamentally misguided, and should therefore be rejected.